

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.475 OF 2010

PETITIONER : Tejram S/o Natthuji Gabhane (Dead)
through L.R. Pramod Tejram Gabhane
(Amendment carried out as per Courts
order dated 08.07.2019.) Aged about 45 years, Occ : Business,
R/o Zilla Parishad Colony, Ganeshpur,
Bhandara

..VERSUS..

RESPONDENTS : 1. State of Maharashtra,
Rural Development and Water
Resources Department, Mantralaya
Mumbai – 400 032, Through its
Principal Secretary.
2. The Additional Commissioner,
Nagpur Division, Nagpur.
3. Chief Executive Officer,
Zilla Parishad, Bhandara.
4. The Deputy Director of Vocational
Education and Training Regional
Office, Civil Lines, Nagpur.
5. The Education Officer (Secondary)
Zilla Parishad, Bhandara,

Shri O. Ghare, Advocate for the Petitioner.
Ms N. P. Mehta, AGP for the Respondent No.1/State.
Ms M. P. Munshi, Advocate for the Respondent Nos.3 and 5.

CORAM : SUNIL B. SHUKRE AND
VALMIKI SA MENEZES, JJ.

DATE : 6th SEPTEMBER, 2022.

ORAL JUDGMENT : (PER : SUNIL B. SHUKRE, J.)

1. Heard Shri Ghare, learned counsel for the petitioner, Ms Munshi, learned counsel for the respondent nos.3 and 5/Zilla Parishad and also Ms Mehta, learned Assistant Government Pleader for the respondent no.1/State.

2. Shri Ghare, learned counsel for the petitioner, on instructions, does not press the challenge to the extent of order of dismissal of the deceased Tejram Natthuji Gabhane, but he presses his challenge to the extent of the recovery order directing recovery of Rs.33,75,500/- (Thirty Three Lakhs Seventy Five Thousand Five Hundred Only) from the deceased employee of Zilla Parishad, Bhandara.

3. According to the learned counsel Shri Ghare, the recovery order cannot be allowed to sustain in law as criminality of the deceased employee could not be established on account of his untimely death resulting in abatement of the criminal proceedings against him and that there was no charge levelled against the petitioner that he was the ultimate beneficiary and also the charge that he himself had forged the fraudulent bills. He further submits that in-fact the

beneficiaries were some third parties from whom the amount wrongly paid should have been recovered by Zilla Parishad, Bhandara.

4. Ms Munshi, learned counsel for the respondent nos.3 and 5/Zilla Parishad, submits that the schools to whom the amounts were paid under EBS Grants Scheme were not in existence, and therefore, there was no question of making any effort of recovering the amount from the non existent schools and in such a case, the disbursed amount was required to be recovered only from the deceased employee. Ms Mehta, learned Assistant Government Pleader for the respondent no.1/State, adopts the argument of the learned counsel for Zilla Parishad.

5. We would have accepted the argument of the learned counsel for Zilla Parishad and also the learned AGP had there being a specific charge levelled against the deceased employee that he was the sole beneficiary or that he himself had forged the bills in question. The charge which was levelled against the deceased employee was only to the effect that he did not perform his duty properly in verifying the bills and making his recommendations for sanction and payment of the bills. There

is also no finding recorded anywhere in the impugned order passed by the Disciplinary Authority that the deceased employee had himself forged the bills, and therefore, there was a reason to believe that the deceased employee could have been one of the beneficiaries of the wrong payments made by the Zilla Parishad. Such being the nature of enquiry and findings recorded in the enquiry held against the deceased employee, we do not think that it would be just and proper to say that the deceased employee himself was entirely responsible for the loss caused to Zilla Parishad and was therefore liable to refund the whole amount. In-fact, in such a case, it is necessary that Zilla Parishad, Bhandara, makes an effort to recover the loss from the actual beneficiaries but, there is no material placed on record to enable us to reach any conclusion in this regard. But, from the documents available on record, it appears that entire responsibility for causing of loss to Zilla Parishad exchequer cannot be fastened upon the deceased employee.

6. The learned counsel for the petitioner has rightly submitted that guilt of the petitioner in the criminal case registered against him now cannot be established as the

criminal proceeding has abated on account of his death during the pendency of the criminal proceeding. If this is the case, it would be not proper for Zilla Parishad, Bhandara to proceed with the recovery of the amount from the legal heirs of the deceased employee, as per the order passed by the Disciplinary Authority.

7. In the result, we are inclined to partly allow the petition and we direct that no recovery of the amount of Rs.33,75,500/- (Thirty Three Lakhs Seventy Five Thousand Five Hundred Only) be made from the legal heirs of the deceased employee and to this extent, the impugned order of the Disciplinary Authority is quashed and set aside. Rest of the impugned order shall stand as it is.

8. Rule is made absolute in above terms.

(VALMIKI SA MENEZES, J.) (SUNIL B. SHUKRE, J.)

TAMBE